

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**909 CRIMINAL APPLICATION NO. 3080 OF 2019
IN
APEAL/624/2019**

Varun Kumar Tiwari

...Applicant

Versus

1. Union of India

2. State of Maharashtra

...Respondents

...

Advocate for Applicant : Mr. Ravi Gurnani h/f Mr. Nagori Girish and
Mr. Shermale K. N. (vp Filed In Appeal 626/2019)

Standing Counsel for Respondent No. 1-U.O.I. : Mr. Nagode D.G.
A.P.P. for Respondent No. 2-State : Mr. S.P. Sonpawale

...

CORAM : N.R. BORKAR , J.

DATE : 09th DECEMBER, 2021.

P. C. :

1. This is an application under Section 389 of the Code of Criminal Procedure (for short "Cr.P.C.") for suspension of substantive sentence and to release the applicant on bail.

2. The applicant was tried along with other co-accused for the offences punishable under Sections 8 (c), 23 (c), 25, 27A read with Section 29 and 22 (c) of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (for short "N.D.P.S.") Act. The applicant came to be convicted for the offence under Section 8 (c) punishable under

Section 22 (c) of the N.D.P.S. Act and sentenced to suffer rigorous imprisonment for a period of 10 years and to pay fine of Rs. 1,00,000/-, in default, to suffer R.I. for two and half years. The applicant is further convicted for the offence punishable under Section 29 of the N.D.P.S. Act and sentenced to suffer R.I. for 10 years and to pay fine of Rs. 1,00,000/- and in default to suffer R.I. for two and half years. The sentences are directed to run concurrently.

3. The allegations against the present applicant and other co-accused are that the applicant and other co-accused conspired to produce, manufacture, sale, purchase transport, store, finance, export and possess psychotropic substance i.e. Ketamine Hydrochloride and in furtherance of said conspiracy Ketamine Hydrochloride was illegally manufactured, sold etc.

4. The learned counsel for the applicant submits that there is no evidence on record to show that the chemical composition of the psychotropic substance, which according to the prosecution the applicant and other co-accused were manufacturing, transporting etc was of same chemical composition as mentioned in the schedule to the N.D.P.S. Act. It is further submitted that out of 10 years sentence, the applicant has already undergone approximately 8 years. It is submitted that the applicant is not involved in any other criminal case. It is submitted that considering these circumstances

the substantive sentence be suspended and the applicant be released on bail.

5. In support of submission, the learned counsel for the applicant has relied upon the order of the Hon'ble Supreme Court in the case *Mossa Koya KP Vs. State (N.C.T. of Delhi)* in Criminal Appeal No. 1562 of 2021 dated 06th December, 2021.

6. On the other hand, the learned Standing Counsel for Respondent No. 1 and learned A.P.P. for Respondent No. 2-State submit that the applicant is convicted for serious offences punishable under the N.D.P.S. Act. It is submitted that instead of suspending sentence the appeal be posted for final hearing. It is submitted that considering the nature of offence the application be rejected.

7. The learned Standing Counsel and learned A.P.P. for State have not disputed the fact that the present applicant was arrested on 14.12.2013 and as a under trial prisoner and as a convict the applicant has undergone approximately 8 years out of total sentence of 10 years. The appeal is of the year 2019 and it is not ready for hearing. The jail appeals of 2015 are pending for hearing. Considering these facts, I am inclined to suspend the sentence and release the applicant on bail. In the result, following order is passed :

ORDER

- a. Application is allowed.
- b. The substantive sentence imposed by the trial Court is suspended and the applicant Varun Kumar Tiwari is released on bail on furnishing P.R. bond in the sum of Rs. 1,00,000/- (Rupees One Lakh) with one or more sureties in the like amount.
- c. The applicant shall not leave India without permission of this Court.
- d. The applicant shall attend the trial Court, once in two months i.e. on first working day of the month in between 11.00 a.m. to 5.00 p.m. during the pendency of the present appeal.

(N.R. BORKAR)
JUDGE

mahajansb/